

REGION 9: BAY DELTA CONSERVATION PLAN DRAFT EIS
Briefing May 20, 2014 05/16/14 v2

ISSUE: The BDCP Draft EIS warrants an

Ex. 5 - Deliberative

Ex. 5 - Deliberative rating; comments and rating are due June 13th.

Ex. 5 - Deliberative

Talking Points for Bob Perciasepe for the Deputies Meeting:

- All of the alternatives evaluated in the DEIS would result in increased frequency and magnitude of violations of multiple water quality standards and would adversely affect multiple beneficial uses, including aquatic life.
- The DEIS, as currently written, is not an **Ex. 5 - Deliberative**
- EPA believes that an acceptable water conveyance project can be implemented, but the current DEIS does not describe/support such an alternative.

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Analysis of the Draft EIS:

- **Ex. 5 - Deliberative** Implementation of the BDCP would result in increased salinity intrusion and minimal changes to freshwater flows through the Delta, and would cause or exacerbate:
 - Potentially permanent violations of water quality standards.
 - The Delta is currently listed as impaired for electrical conductivity (EC), chloride, and selenium pursuant to Clean Water Act Section 303(d). The operation of the proposed conveyance would contribute to or increase violations of these standards.
 - Magnitude: chloride would be violated 3-4 times the standard, EC would be violated 2-3 times the standard *on a 16-year average*.
 - Frequency: 68-74% of the time chloride would be violated at Antioch (drinking water location) and 6-27% of the time for EC (agricultural and aquatic location at Emmaton).
 - Increased concentrations of methylmercury from the restoration actions.
 - Adverse effects on existing beneficial uses, such as municipal water supply, agricultural water supply, and protection of aquatic life;
 - USFWS and NMFS have issued “jeopardy” opinions for salmon and Delta smelt associated with the existing water supply network.
 - Multiple fed/state agencies and independent scientists conclude both increased

freshwater flows *and* habitat restoration are needed to recover fish populations.

- Project rests on scientifically unproven premise that habitat restoration alone would ensure species recovery; habitat restoration is assumed to be 100% successful.

- **Ex. 5 - Deliberative** The Information in the DEIS is:
 - Inconsistent in analysis of uncertainties and includes unsubstantiated conclusions that are favorable to the Proposed Project. Significant impacts are not clearly disclosed nor provided in a comparative format to allow evaluation of project impacts.
 - Incomplete in its analyses, analyzing the Proposed Project in greater detail than other alternatives. Impacts are described as “adverse” or “no determination” based on similar information, without explaining the basis for the different conclusions.
 - Overly optimistic in the face of significant uncertainty regarding potential performance of the proposed tunnels and the viability of the proposed habitat restoration projects. Reasonable alternatives, incorporating a suite of measures, which would meet the purpose and need with reduced impacts, were not evaluated.
 - **Ex. 5 - Deliberative** federal lead agencies issued highly critical public comments on the Administrative DEIS; their staffs have said the DEIS does not support the issuance of an ESA Section 10 permit; the DEIS acknowledges that it may not be used to support issuance of a CWA 404 permit.

Recommended Plan and Pros/Cons:

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Desired Outcome:

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Background:

- The BDCP is a Habitat Conservation Plan that is being developed to support the issuance of an Incidental Take Permit under Section 10 of the Endangered Species Act for continued operation of Central Valley Project and State Water Project water facilities. A major component of the Proposed Project and most alternatives is construction and operation of tunnels (Conservation Measure 1) to convey 3,000-15,000 cubic feet per second of Sacramento River water 40 miles south under the Delta to the existing pumps. Although the document is officially the product of the federal lead agencies, USFWS, NMFS, and BOR; the California Department of Water Resources, as State lead agency, is directing the effort, along with the proponent water exporters. The HCP and the EIS/EIR are funded by the water exporters (“the applicants”) and are being prepared by consultants directed primarily by DWR.
- The San Francisco Bay Delta Estuary is one of the largest and most important estuarine systems on the Pacific Coast of the United States. It is the hub of California’s water distribution system, supplying drinking water to 25 million people and irrigation water to 4 million acres of farmland.

EPA Involvement:

- EPA has been a cooperating agency since 2008. Region 9 staff have actively participated in regular meetings with the lead federal and state agencies during development of the BDCP and DEIS for several years. We are committed to continued involvement in this process.
- Senior EPA officials have participated in interagency meetings convened by CEQ for at least the past year, and have been briefed by Region 9, on several occasions, including our initial recommendation that the DEIS not be issued for public review until those issues were resolved, and our continuing recommendation that the DEIS be withdrawn, revised, and reissued for public review.
- EPA provided critical comments on the draft BDCP and the Administrative DEIS in April 2012 and July 2013, and verbally advised the lead agencies, on multiple occasions between July and December 2013, not to release the DEIS for public review until the substantive issues raised in our comments on the ADEIS were resolved.
- In November 2013, we advised federal and State lead agency staff that public issuance of the DEIS would likely put EPA in the position of issuing an adverse rating because fundamental issues had not been resolved. The lead agencies acknowledged this, but issued the DEIS anyway.

Implications of Ex. 5 - Deliberative

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Interested Parties:

- The federal lead agencies (USFWS, NMFS, and BOR) publicly provided highly critical comments on their own Administrative DEIS in July 2013, and have an ongoing list of outstanding issues.
- The Army Corps of Engineers said, in their public comments on the Administrative DEIS, that they cannot use this document to support a Clean Water Act Section 404 permit decision; **Ex. 5 - Deliberative** (recently shared with us) say the same.
- Independent scientists and public committees have weighed in critically with over half a dozen reports. Delta Independent Science Board, which supports the Delta Stewardship Council, has publicly posted on its website highly critical final draft comments on the DEIS.
- Governor Brown supports taking action without delay (however, we have been advised that he would not want species driven to extinction on his watch, and it is not clear if he is aware that the proposed project would not further the recovery of listed species).
- Senator Feinstein supports the BDCP; other Congressionals are mixed.
- Environmental organizations and in-Delta users are opposed.

Next Steps:

- Propose the recommended Plan A (above) to DOI and Commerce at Deputies meeting on May 21.
- If DOI and Commerce do not agree to Plan A, proceed with Plan B; **Ex. 5 - Deliberative**

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